IN THE HIGH COURT **OF BOMBAY AT GOA**

CRIMINAL MISCELLANEOUS APPLICATION NO. 206 OF 2004

Shri Chandrakant Nagesh
Hegde, Son of Nagesh Hegde,
Resident of Vijayalaxmi Nilay,
Opp. B.V.B. Engineering College,
Vidya Nagar, Hubli, Karnataka,
through his next friend brother
Shri Venkatesh N. Hegde. ... Applicant

versus

Government of India
through Directorate of Revenue
Intelligence, Regional Unit Goa,
H-1. Gharse Towers, M.G.Road,
Panaji-Goa 403 001. ... Respondent

Mr. G. R.V. Murthy and Mr. Rohit Bras De Sa, Advocates for the Applicant.

Mr. Joseph Vaz, Special Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 24TH SETEMBER,2004

ORAL ORDER

The Applicant who is accused of having committed offences under Section 135 of the Customs Act, 1962(Act, for short) has approached this Court for bail by application dated 21st

September, 2004, in the background of facts, which may be stated, as follows:-

The Accused who is said to control a business enterprise styled as M/s Pritvi Granite in the name of his wife, on or about 29th July, 2004, imported foreign brand porcelain tiles at Mormugao Port in two containers bearing Nos.CRXU 1337231 and MSKU 2523876 under Bill of entry no. 103503 dated 28th July, 2004. The Officials of the Directorate of Revenue Intelligence(DRI, for short) suspected that the said tiles were imported from a Port in China by forging and fabricating documents to show that they were imported from a Port in Taiwan with a view to evade the payment of Anti Dumping Duty which is payable under Notification No.71/03-CUS dated 1st May, 2003, issued under the Customs Tariff Act, 1975.

3. The said consignment was seized and, thereafter, the Accused was summoned from time to time to record his statement under Section 108 of the Act. It appears that the Accused did appear on certain occasions but sought adjournments on several occasions. The Officials of DRI having found that no sufficient information was forthcoming from the Accused, arrested the Accused on 13th September, 2004, under Section 135 of the Act and produced him before the learned Chief Judicial Magistrate, Panaji, with an application for his remand in judicial custody for fifteen days and also with a prayer that the Accused was required for uninterrupted

custodial interrogation to find out the truth and the extent to which the Government was defrauded from the payment of the said duty.

4. The said application for remand dated 13th September, 2004, in the absence of the learned Chief Judicial Magistrate, Panaji, was dealt with by another learned Judicial Magistrate First Class, who was pleased to remand the Accused to judicial custody for a period of five days. It is not known as to why the Officials of the DRI did not present an application at the same time seeking the custody of the said Accused for interrogation or for recording his statement under Section 108 of the Act. It has been submitted on behalf of the DRI that the judicial custody of the Accused was sought with permission for his interrogation because the authorities of the DRI do not have their own lock-up and, this submission was made placing reliance on a Judgment of this Court reported in 1991 Cri.L.J. 820.

5. The Accused having found that he was remanded to judicial custody moved an application for bail on the same day to the Court of Sessions which was fixed for hearing on 14th September, 2004, at 2.30 p.m. This application was filed through learned Advocate Rohit Bras De Sa. On 14th September, 2004, the Accused filed another application at about 10.00 a.m. before the learned Chief Judicial Magistrate, Panaji, through learned Advocate Shri R. R. Chodankar. One does not know as to what happened to the hearing in Bail Application No.271/2004 which was fixed at 2.30 p.m. on 14th

September, 2004. However, the Bail Application No.93/2004 filed before the learned Chief Judicial Magistrate, Panaji, came to be granted even before the Officials of DRI were given an opportunity to file their reply.

6. The learned Chief Judicial Magistrate, Panaji, granted conditional bail to the Accused on 14th September, 2004, in the afternoon session with certain terms and conditions.

7. Against the said Order dated 14th September, 2004, in Bail Application No.93/2004, the DRI approached the learned Sessions Court in Criminal Miscellaneous Application No.46/2004 for cancellation of bail. This application came to be disposed off by the learned Sessions Judge on 21st September, 2004. The learned Sessions Judge cancelled the conditional bail granted to the Accused on 14th September, 2004, on the ground that the Order of the learned Chief Judicial Magistrate, Panaji, in admitting the Accused to bail was perverse, arbitrary and was passed having total disregard to the material on record. After the bail granted to the Accused was cancelled by the learned Sessions Judge, Panaji, the Accused surrendered on 21st September, 2004, in the evening session and as can be seen from the reply filed by the DRI before this Court the Accused was produced for remand at about 10.00 a.m. on 22nd September, 2004, but the remand was granted only at about 5.45 p.m. remanding the Accused to seven days in police custody. It has

also been submitted that on 14th September, 2004, an application for custody of the Accused who was earlier remanded to judicial custody was made but the said request was not entertained by the learned Chief Judicial Magistrate, Panaji, because he had ordered the Accused to be released on bail with conditions.

8. The Accused has chosen not to contest the Order of the learned Sessions Judge dated 21st September, 2004, cancelling the bail earlier granted to the Accused by the Order of the learned Chief Judicial Magistrate, Panaji, dated 14th September, 2004, but has chosen to file a Bail Application, simpliciter.

9. In support of the said Bail Application, Mr. G. R. V. Murthy, learned Counsel of the Accused has submitted that the offence committed by the Accused is not at all serious in that it has been made punishable with imprisonment of three years or with fine and, therefore, the custodial interrogation was not called for. Mr. Murthy, learned Counsel has submitted that the Accused be admitted to bail on terms and conditions which this Court may deem fit to impose and that the Accused will certainly co-operate with the Officials of the DRI. Mr. Murthy, learned Counsel has also submitted that there was no mention in the application for remand that the Accused had not co-operated with the Officials of DRI when the Accused was earlier summoned by them to record his statement under Section 108 of the Act.

10. On the other hand, Mr. Joseph Vaz, learned Special Public Prosecutor for the Respondent/DRI has submitted that at present, the Accused has been remanded in police custody and that every endeavour is being made to interrogate the Accused and to complete the investigations before the expiry of the said period. Mr. Vaz, learned Special Public Prosecutor has further submitted that earlier the Accused did not at all co-operate with the Officials of the DRI, whenever he was summoned to record his statement under Section 108 of the Act.

11. As already stated, the bail granted to the Accused was cancelled by the learned Sessions Judge, Panaji, on 21st September, 2004 and on the same day, the Accused has filed the present application for bail without challenging the Order of the learned Sessions Judge. Since then, the Accused is remanded to Police Custody for seven days on 22nd September, 2004. In such a situation it would not be proper for this Court to interfere at this early stage of investigation.

12. The offence allegedly committed by the Accused on or about 29th July, 2004, per se may not be very serious but it has been submitted on behalf of the DRI that this was the eleventh consignment brought by the Accused and the Accused is believed to have brought similar consignments by similar modus operandi

through other Ports thereby defrauding the Government of duty to the extent of Rs.1,04,65,806/-. If that is so, the allegations against the Accused cannot be brushed aside as not being serious. That apart, the considerations for the grant of bail in bailable offences are one too many and they have been considered by the Supreme Court from time to time. Seriousness of the offences is one of them. The others are the nature of evidence, circumstances which are peculiar to the Accused, a reasonable possibility of the presence of the Accused not being secured at the trial, apprehension of the witnesses being tampered with, larger interest of the public or the State and similar other considerations.

13. The contention that there was no allegation that the Accused had not co-operated earlier in the remand application is not quite correct. It was mentioned on behalf of DRI in their first application for remand, that the Accused had misled the investigations regarding the source of material and related documents and was also defying dates for which he was summoned in order to further delay the investigations. The first attempt to get the custody of the Accused was throttled by the learned Chief Judicial Magistrate by granting conditional bail to the Accused. The Accused has now been in custody only from 21st instant. In a case of this nature when evasion of duty has been of substantial value and as it also involves other Accused who are alleged to have conspired with the present Accused, sufficient time certainly requires to be given to

the Officials of DRI to complete the investigations.

14. In this view of the matter, therefore, it would be rather premature for this Court to interfere and admit the Accused to bail. The learned Sessions Judge, has rightly observed that the investigations are still at a preliminary stage and in case, the Accused is left at large, his tampering with the investigations cannot be ruled out. The learned Sessions Judge, has also rightly observed that custodial interrogation would be of great advantage to the Officials of DRI with a view to find out the complicity of the other Accused either in this country or abroad in facilitation of the commission of the offence against the Accused.

15. Before parting with this Order, note is required to be taken of certain disturbing features of this case. Not taking note may amount to condoning the same. The learned Judicial Magistrate, First Class, after hearing the Accused, his Advocate Mr. B. Sawant and the concerned Officials of DRI chose to remand the Accused to five days judicial custody. On 14th September, 2004, the learned Chief Judicial Magistrate, without giving opportunity to the Officials of DRI and without even considering the Order of the learned Judicial Magistrate, First Class, dated 13th September, 2004, chose to admit the Accused to bail. In case, the Accused was remanded to judicial custody on 13th September, 2004, by the learned Judicial Magistrate, First Class, Panaji, propriety demanded that the learned Chief Judicial

Magistrate, ought to have directed to have placed the Bail Application filed before him before the same learned Magistrate who had chosen to remand the Accused to judicial custody because then he had felt that the investigations of the case were at the preliminary stage and further detention of the Accused was necessary. One does not know why the learned Chief Judicial Magistrate, Panaji, did not place the Bail Application before the very learned Magistrate who had remanded the Accused to custody. In this context, I may refer to the observations of the Apex Court in **Shahzad Hasan Khan** v. **Ishtiaq Hasan Khan and another** (AIR 1987 SC 1613) which reads thus:

> "The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every judge till he gets an order to his liking resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matter must be placed before the same Judge, if he is available for orders"

16. Thereafter, the Accused filed a Bail Application before the learned Sessions Judge on the same day i.e. on 13th September, 2004, through Advocate Mr. Rohit Bras De Sa and again, another Bail Application was filed before the learned Chief Judicial Magistrate,Panaji, on 14th September, 2004, through another Advocate Mr. R. R. Chodankar. There has been a practice of making a mention in the Bail Application that there is no other Bail Application pending before another Court. It is not known why such a practice was given a go-bye. Chapter XXVI of The Bombay High Court Appellate Side Rules, 1960, provides that:

> "Every appeal or application shall contain a statement that no appeal or application in the same matter has previously been filed. If the appellant or applicant state that an appeal or application has previously been made, he shall also state how the said appeal or application has been disposed of and how the present appeal or application is competent".

17. There is also no explanation as to why the application before the learned Chief Judicial Magistrate,Panaji, was argued before withdrawing the application filed before the learned Sessions Judge more so when both the Courts are situated in the same building. Regarding this controversy the learned Sessions Judge stated as follows:

> 7. At the outset, it may be mentioned that the aforesaid

respondent had filed a bail application No.271/2004 before this Court on 13.9.2004 and the same was fixed for say and arguments on 14.9.2004 at 2.30 p.m. The records reveal that the respondent herein had filed another application before the Chief Judicial Magistrate on 14.9.2004 at 10.00 a.m. without disclosing the fact that the bail application was already filed by him before this Court. The said application was fixed for hearing at 2.30 p.m. and on the same date the bail application was granted and thereafter an application was filed before this Court withdrawing the bail application No.271/2004. The learned Advocate Shri De Sa has submitted that the bail application No.271/2004 which was filed through the next friend i.e. the brother of the respondent was filed by him whereas the bail No.93/2004 was filed by the respondent through some other Advocate. He has stated that he was not aware of the filing of the bail application before the Chief Judicial Magistrate. I am unable to accept the contention that the applicant was not aware of the filing of the bail application before this Court or that his brother was not aware of filing the bail application before the Chief Judicial Magistrate, moreso, when the records of bail application No.93/2004 indicates that Venkatesh Hegde, the brother of the applicant who had filed the bail application before this Court had stood surety in Bail application No.93/2004.

> 8. The learned Advocate Shri De Sa has stated that he had brought to the notice of the learned Chief Judicial Magistrate about the pendency of the Bail application before this Court and that he had made a statement that he would withdraw the application before this Court. In the event such a statement was in fact made the learned Chief Judicial Magistrate could not have decided the bail application filed before him when the bail application filed by the same accused was still pending before this Court. However, there is nothing on record to indicate that the learned Chief Judicial Magistrate was informed about the pendency of the bail application before this Court or that any statement was made before the learned Chief Judicial Magistrate indicating that the respsondent had undertaken to withdraw the bail application filed before this Court. The respondent was not entitled to file another application before the Court of Chief Judicial Magistrate during the pendency of the previous application. Filing application before two different Courts and suppressing this fact from the Courts though not a ground for cancellation of bail, is certainly an abuse of process of Court".

18. A grievance has also been made on behalf of DRI that when the Accused was produced for further remand at about 10.00

a.m. on 22nd September, 2004, the Officials and the Accused were made to wait till 5.45 p.m. This is seen as a harassment by the Officials of DRI on the part of the learned Chief Judicial Magistrate, Panaji, the DRI having approached the learned Sessions Judge to get his Order set aside. On behalf of the Accused, the wait/delay is sought to be explained by submitting that till 5.45 p.m., the Order of the learned Sessions Judge was not available and the delay was caused on account of the same. The controversy does not end there.

19. Here before this Court, a Bail Application is filed without certified copy of a single Order passed by any of the Courts below. No declaration as required by the aforesaid Rules has been made in the application, and at the time of hearing it has been submitted on behalf of the Accused that a certified copy of the Order of the learned Sessions Judge was made ready and delivered only on 23rd September, 2004, although the matter was heard on 15th September, 2004 and, such a copy has been produced on behalf of the Accused. On behalf of DRI another copy has been produced and this copy shows that it was made rady and delivered on 22nd September, 2004. It is accompanied by a copy of a letter dated 23rd September, 2004 by which the parties were called upon to produce the certified copies for rectification. The certified copy produced on behalf of the Accused is not rectified while the copy produced on behalf of DRI is corrected or rectified.

20. The picture which emerges from what is narrated hereinabove is one which is bound to erode the faith of the common citizen in the judicial system. All the above lapses show that Judicial discipline has been made a casualty and I hope all those who are concerned with maintaining the Judicial discipline will ensure that such lapses do not occur in future. In order to prevent the recurrence of such lapses, certain directions are required to be given and the observation of the Hon'ble Supreme Court in the case of **Shahzad Hasan Khan** v. **Ishtiaq Hasan Khan and another(**supra) could be enforced, mutatis mutandis. Therefore:-

1. The Sessions Judges in both the Districts in this State are hereby directed to instruct all Judicial Magistrates/Chief Judicial Magistrate under their respective jurisdictions that bail application/s shall be placed before the same Judicial Magistrate, First Class/Chief Judicial Magistrate who has granted remand, if he is available for orders.

2. The Sessions Judges in both the Districts should ensure and also direct the other Judicial Magistrates/Chief Judicial Magistrate that they shall ensure, that all bail applications carry a declaration, as contemplated in the aforesaid Rules[the expression appellant/appeal be deleted].

21. As regards issue of certified copies, necessary provisions in that respect are already found in Criminal Manual which all Judicial Officers are required to follow scrupulously.

22. With the above observations, the Bail Application is hereby dismissed.

23. Copy of the Order be sent to both the Sessions Judges, in this State.

N. A. BRITTO, J.

RD.